Supreme Court, U.S.
FILED

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No.

IN THE SUPREME COURT OF THE UNITED STATES

LEANNE CHILDS,

Petitioner.

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Illinois

PETITION FOR A WRIT OF CERTIORARI

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THE QUESTIONS PRESENTED FOR REVIEW

Whether defendant's constitutional rights were denied when the trial court refused expert testimony on the issue of defendant's involuntary intoxication at the time of the offense.

Whether defendant's constitutional rights were denied when the trial court refused to tender an involuntary manslaughter instruction to the jury, when there was evidence of recklessness in the record.

THE LIST OF ALL PARTIES TO THE PROCEEDING IN THE SUPREME COURT OF ILLINOIS

The parties to the proceedings in the Supreme Court of Illinois were respondent People of the State of Illinois and petitioner Leanne Childs.

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Petitioner Leanne Childs respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Illinois in this case.

CITATION OF OFFICIAL AND UNOFFICIAL REPORTS

The decision of the Supreme Court of Illinois was entered on October 3, 2001, and is not officially reported. The decision of the Appellate Court of Illinois was entered on June 26, 2001, and is not officially reported.

JURISDICTIONAL STATEMENT

The judgment of the Supreme Court of Illinois was entered on October 3, 2001. The Court's jurisdiction is invoked under 28 U.S.C. §1254(2).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution states that:

> No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury except in cases arising in the land or naval forces or in the militia when in actual service of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

The Sixth Amendment states that:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defense.

The Fourteenth Amendment states, in part, that:

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On May 25, 1999, the circuit court of Sangamon County, Illinois sentenced petitioner Leanne Childs to life imprisonment for the first degree murders of Aaron Calcara and Michael Nelson. Substantial constitutional violations occurred during trial and beg for the Court's review and consideration.

Essentially stated, Ms. Childs was personal friends with Mr. Calcara and Mr. Nelson. On May 1, 1998, she shot them to death in her automobile outside Springfield, Illinois.

She claimed that they had threatened her with rape and that they forced her to smoke a PCP-laced cigarette, which caused her to be involuntarily intoxicated. At trial, she sought to introduce her involuntary intoxication defense and offered an involuntary manslaughter instruction, both of which were rejected, causing Ms. Childs' serious deprivations of her constitutional rights.

ARGUMENT

The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. The rights to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process. In In re Oliver, 333 U.S. 257, 273, 68 S.Ct. 499 (1948), Mr. Justice Black, writing for the Court, identified these rights as among the minimum essentials of a fair trial:

> A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense--a right to his day in court--are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel.

See also Morrissey v. Brewer, 408 U.S. 471, 488-489, 92 S.Ct. 2593 (1972); Jenkins v. McKeithen, 395 U.S. 411, 428-29, 89 S.Ct. 1843 (1969).

Ms. Childs was denied an opportunity to present her legitimate intoxication defense and her lesser-included offense argument. She was not allowed to demonstrate her expert's knowledge, to probe into the details of his opinion, or to "sift" through his testimony so that the

jury might judge for itself whether he was worthy of belief. Mattox v. United States, 156 U.S. 237, 242-43, 15 S.Ct. 337 (1895). She was not allowed to submit her lesser-included offense instruction to the jury. Ms. Childs' constitutional rights were violated.

ISSUE I

> Defendant's constitutional rights were denied when the lower court refused expert testimony on the issue of defendant's involuntary intoxication at the time of the offense.

The Sixth Amendment--applied to the States by the Fourteenth Amendment--requires that every person charged with a crime has "complusory process for obtaining witnesses in his favor. This Complusory Process Clause insures that defendants will be allowed to subpoena witnesses and to obtain and submit testimony. Washington v. Texas, 388 U.S. 14, 87 S.Ct. 1920 (1967).

Petitioner Leanne Childs timely raised the affirmative defense of involuntary intoxication and filed the report of her expert, Robert E. Chapman, M.D. In opening statements at trial, her attorney informed the jury that, at the time of the offense, Ms. Childs was ordered at gunpoint to smoke a PCP-laced cigarette that affected her ability to act as a sober and rational person. Her attorney told the jury that Ms. Childs had an expert and that, in his expert opinion, the ingestion of this PCP-laced cigarette accounted for or led to her actions at the time of the offense. Defendant's attorney made the following comments to the jury:

> He pointed the gun at Leanne and told Leanne that, 'If you didn't have sex with me and Mr. Calcara,

I'm going to shoot you and your seven-month old child.'

Leanne was in a panic. She was frantic. They said, 'Smoke this, this will calm you down.'

They ordered her then at gunpoint to smoke what we believe to be a PCP-lac d marijuana cigarette, Leanne at gunpoint complied and smokes the PCP-laced marijuana cigarette...

And Dr. Chapman will come down here and he will tell you that based upon what Leanne Childs was facing that day he will tell you, and he will explain to you why she did what she did considering her background and the facts presented to her. He will explain her actions.

He will tell you also that when she was ordered at gunpoint to smoke that PCP-laced cigarette that that affected her ability to act as a sober, rational person, and he will tell you in his considered expert opinion, that based on those facts Leanne Childs was not guilty, she was acting in self-defense.

(Vol. XVI, 59-61)

There were no objections to this argument.

A week after opening statements, the prosecution filed a motion in limine (C-00153), seeking to prohibit Dr. Chapman's testimony on the issue of involuntary intoxication.

The trial court barred this testimony and relied upon People v. Anderson, 113 Ill.2d 1, 495 N.E.2d 485 (Ill. 1986) and People v. Britz, 123 Ill.2d 446, 528 N.E.2d 703 (Ill. 1988).

The trial court and the Illinois appellate courts erred in prohibiting the defendant from eliciting Dr. Robert Chapman's testimony on the issue of involuntary intoxication.

In People v. Britz, the Illinois Supreme Court held that the trial court properly refused to allow defendant's expert witnesses from testifying about defendant's alleged long-standing mental disease or defect predicated upon his voluntary ingestion of alcohol and drugs. The reports of the three experts contained defendant's self-serving hearsay statements regarding the type and quantity of alcohol and drugs that defendant consumed. Following the hearing, the trial court ruled that the defense experts could testify only to conclusions reached through objective tests and any opinions based on the defendant's self-serving statements were inadmissible.

In affirming the trial court's decision, the Court noted that defense experts did not rely on any other reports in assessing defendant's alleged substance abuse disorder and that the basis of their opinions relied substantially on defendant's statement. It held that "to allow an expert to rely solely on self-serving statements made by the Defendant to determine his sanity defense permits this court to circumvent and abrogate the intent and meaning of the Federal Rules of Evidence and the rules announced in Wilson and Anderson." Britz, 123 Ill.2d at 446, 528 N.E.2d at 710.

In People v. Anderson, the Illinois Court held that defendant's expert was entitled to disclose on direct examination the contents of materials used to form an opinion about the defendant's sanity. The trial court refused to allow any disclosure of the reports' contents about defendant's sanity. In reversing, the Anderson Court stated that:

> Rule 703 makes no distinction between treating and non-treating physicians and [...] either may express an opinion founded on any information reasonably relied upon by experts in the field [.] [T]he State's argument has already been rejected. To the extent that a savvy defendant's statements tending to show mental illness might be consciously self-serving, this possibility can adequately be brought out on cross-examination of the expert.

113 Ill.2d at 12, 495 N.E.2d at 490.

The Court determined that, because psychiatrists customarily rely on patients' statements in forming a diagnosis, an expert must be allowed to repeat those statements, if relevant, to explaining the opinion to the jury. Id.

Here the facts and circumstances are comparable to Anderson. Due process and the Complusory Process Clause require that Ms. Childs call Dr. Chapman to testify about her involuntary intoxication at the time of offense.

In rendering his expert opinion that defendant suffered from involuntary intoxication at the time of the offense, Dr. Chapman did not rely solely upon defendant's self-serving statements. Dr. Chapman testified that he reviewed police reports, witness statements, crime scene

reports, and defendant's statements and demeanor. (Vol. XX, 64, 65).

The prosecution compounded the prejudice to Ms. Childs by not objecting to this testimony before trial or during opening statement. The prosecution was well aware that Ms. Childs would call Dr. Chapman and elicited the opinions in his written report. It is highly probable that this jury was tainted by defendant's failure to present such important promised testimony.

Criminal defendants must be allowed to present any valid defense for jury consideration. In serious cases of such an uncharacteristically bizarre crime committed by a woman, this defense would have explained defendant's violent and egregious actions.

There can be no greater error to a criminal defendant than to exclude a valid defense. The trial court committed constitutional error in prohibiting Dr. Chapman about involuntary intoxication.

ISSUE II

Defendant's constitutional rights were denied when the trial court refused to tender an involuntary manslaughter instruction to the jury, when there was evidence of recklessness in the record.

During the jury instruction conference at trial, Ms. Childs requested an instruction on involuntary manslaughter. (Vol. XXI, 4) The trial court refused to tender it. (Vol. XXI, 8, 9). The trial court erred in refusing to tender the involuntary manslaughter instruction because the evidence of recklessness in the record warranted it. The trial court

unconstitutionally took this issue from the jury. This refusal implicates Ms. Childs' rights to due process and confrontation.

It is well settled that, where there is even slight evidence in the record which, if believed by the jury, would reduce the crime to a lesser-included offense, an instruction defining the lesser offense should be given. People v. Perry, 19 Ill.App.3d 254, 311 N.E.2d 341 (Ill.App.1974).

Where such evidence exists, the trial court may not weigh the evidence in deciding whether an issue has been raised entitling the defendant to the instruction. People v. Lyda, 190 Ill.App.3d 540, 546 N.E.2d 29 (Ill.App.1989). As noted in People v. Bryant, 113 Ill.2d 497, 499 N.E.2d 413, (Ill.1986), an instruction on a lesser offense that is included in the one with which the defendant is charged "provides an important third option to a jury which, believing that the defendant is guilty of something but uncertain whether the charged offense has been proved, might otherwise convict rather that acquit the defendant of the greater offense."

Credible evidence that would reduce murder to manslaughter requires a manslaughter instruction. People v. Joyner, 50 Ill.2d 302, 446 N.E.2d 240 (Ill.1975). To justify an involuntary manslaughter instruction, there must be evidence of recklessness. People v. DeMumbree, 98 Ill.App.3d 22, 424 N.E.2d 73 (Ill.App.1981); People v. Burnett, 97 Ill.App.3d 1015, 423 N.E.2d 1193 (Ill.App.1981). A jury is entitled to decide between accident and recklessness. People v. Schwartz, 64 Ill.App.3d 989, 993, 382 N.E.2d 59, 63 (Ill.App.1978).

Clearly, the evidence here supported the submission of an involuntary manslaughter instruction. Prior to the shooting, Mr. Nelson pointed the gun at defendant and told

her to remove her shirt. (Vol. XIX, 122-124). She complied and broke down crying. (Vol. XIX, 125). Mr. Nelson momentarily put the gun down on the console of the car. Believing that Mr. Calcara and Mr. Nelson would kill her, defendant grabbed the gun. A struggle ensued over the gun. The deaths followed.

The sequence of events is more than sufficient to justify tendering an involuntary manslaughter instruction to the jury. A jury could very well have concluded that defendant unintentionally caused the death of Mr. Nelson and/or Mr. Calcara by acts that she performed recklessly and that were likely to cause death or great bodily harm to Nelson and Calcara. See Illinois Pattern Jury Instructions 707 and 708.

The facts are similar to those in People v. Robinson, 163 Ill.App.3d 754, 516 N.E.2d 1292 (Ill.App.1987). In Robinson, evidence was presented that the victim brandished a weapon and that the defendant grabbed the victim's hand, and the gun discharged. Mr. Robinson testified that it was not he but another who produced the gun and he fought back in self-defense. Robinson, 163 Ill.App.3d at 776, 516 N.E.2d at 1309. The Robinson court ruled:

> If the jury chose to believe him as to the foregoing but did not believe that he thought he was acting in self-defense, it might nevertheless have believed that his actions were reckless, which would support an involuntary manslaughter conviction.

Robinson, 163 Ill.App.3d at 778, 516 N.E.2d 1292 at 1310. The Robinson court held that failure to give the involuntary manslaughter instruction was reversible error. Robinson, 163 Ill.App.3d at 780, 516 N.E.2d at 1311.

CONCLUSION

For the foregoing reasons, petitioner Leanne Childs respectfully requests that the Court grant the petition for a writ of certiorari, issue the writ, hear this case on its merits, reverse her conviction and life sentence, and remand this case to the Illinois courts for further proceedings.

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